

# COMMUNITY EXPRESS PROGRAM GUIDE

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## 1. WHAT IS COMMUNITY EXPRESS?

The Community Express Pilot Loan Program is a collaborative effort between the SBA and the National Community Reinvestment Coalition (NCRC) and its member organizations. Under the pilot, designated NCRC lenders are authorized to implement an *SBAExpress*-like loan program to increase SBA lending to pre-designated geographic areas serving primarily New Markets small businesses. The program also includes a technical assistance component.

The SBA recognizes that a number of segments of the small business community continue to have difficulty in accessing capital from traditional lending markets. These businesses, the New Markets, are those newer smaller businesses that need small size loans and equity investments accompanied by technical assistance. They are comprised of current and prospective small businesses owned by minorities, women, and veterans, who are underrepresented in the population of business owners compared to their representation in the overall population, as well as businesses located or locating in Low and Moderate Income urban and rural areas

To assist these small concerns, the Agency is continuing to develop, implement, and test new programs and initiatives designed to more efficiently and effectively deliver SBA financing to these markets. The Community Express program represents one of these initiatives and is a cooperative effort between the SBA and the National Community Reinvestment Coalition. It brings SBA's program experience and lending capability together with the lending and community development expertise of the NCRC and its affiliated lenders.

The NCRC is a non-profit trade association comprised of 680 dues-paying community development and advocacy groups. Members are involved in and committed to revitalizing distressed and underserved communities. NCRC's mission is to ensure fair and equal access to credit, capital, and banking services and products to these communities. NCRC seeks to develop and support long-term solutions that provide resources, knowledge, and skills to build community and individual net wealth.

The NCRC has a Banker/Community Collaborative Council (BCCC) comprised of representatives from the lending community and community leaders (from the NCRC's Board of Directors). The Council promotes community-lender partnerships and meets periodically to discuss matters of mutual interest and to collaborate on community development issues. The Community Express pilot evolved from discussions among the SBA, the NCRC, and the BCCC.

The Community Express Pilot program is similar to the Agency's *SBAExpress* pilot and

conforms generally to its policies and procedures, but focuses on pre-designated geographic areas serving primarily New Markets. However, there are some variations from *SBAExpress*, and the program includes specific provisions for technical assistance.

Under the pilot, BCCC lenders, each of which must be a PLP lender in good standing, are authorized to adopt *SBAExpress*' streamlined and expedited loan processing and approval procedures to address New Markets. (Community Express is initially limited to BCCC lenders, but may be extended to other PLP lenders in good standing October 1, 1999.) Participants are thus allowed to use, to the maximum extent possible, their respective loan analyses, loan procedures, and loan documentation. This includes their own application forms, internal credit memoranda, notes, collateral documents, servicing documentation, and liquidation documentation. Participants must, however, continue to follow their established and proven internal credit review and analysis procedures for loans of similar size and type.

Community Express also uses the abbreviated *SBAExpress* loan application, which is submitted to the Agency's centralized processing facility in Sacramento. The processing center determines the borrower's eligibility and issues an SBA loan number (usually within 36 hours), but does not perform any additional credit analysis. (More complex loans and loans falling outside Community Express program eligibility will be handled by SBA district offices and regular 7(a) loan processing procedures.)

Also, similar to *SBAExpress*, Community Express participants must service and liquidate their loan portfolios and use generally accepted commercial banking standards employed by prudent lenders. Routine loan servicing and liquidation issues will be handled by SBA's Loan Servicing Centers in Little Rock and Fresno, but all purchases will be handled by Fresno.

Due to the unique problems and challenges inherent in addressing the financing needs of the SBA's New Markets businesses, the Community Express program does differ from the *SBAExpress* pilot in some significant ways. Technical Assistance has been recognized by both the NCRC and the SBA as often crucial to the success of New Markets small businesses. As a result, the Community Express program includes a specific technical assistance component. Borrowers must receive pre- and post-loan closing technical and management assistance from local non-profit providers and/or from BCCC lenders, with that assistance coordinated, arranged and, when necessary, paid for by Community Express lenders. BCCC lenders may also consider this technical assistance as a collateral enhancement.

To encourage participating lenders to more aggressively address New Markets, and to offset some of the additional cost to lenders of the technical assistance component, SBA's percent of loan guaranty under Community Express conforms to standard 7(a) practice. This contrasts with *SBAExpress*, which carries a maximum SBA guaranty of 50 percent.

In addition, the maximum loan amount under Community Express is \$250,000, which is greater than the *SBAExpress* maximum of \$150,000.

## 2. HOW DOES COMMUNITY EXPRESS RELATE TO OTHER SBA LOAN PROGRAMS?

Community Express is expected to complement SBA's Microloan program, which is targeted to emerging businesses that require loans of \$25,000 or less and that also can benefit from effective technical assistance. Community Express will add to SBA's continuum of loan products and provide financing to those businesses that fall between the parameters of SBA's Microloan program and conventional loan programs.

The NCRC and the participating lenders also recognize that Community Express represents a unique opportunity to expand existing partnerships and build new partnerships between participating lenders and community organizations. One way of cementing those partnerships, while expanding the range of credit services available to businesses in LMI and minority areas, is through strengthening the participating lenders' commitments to the SBA Microloan Program. Where an SBA Microloan intermediary already exists in a pilot site, the participating lender will refer potential borrowers who may be more suited to the Microloan Program to Microloan intermediaries. Similarly, SBA will encourage SBA Microloan intermediaries to refer applicants who perhaps do not require the same level of TA as the typical micro-borrower to the Community Express lender. As this will likely increase the applicant stream to the SBA Microloan Program, Community Express lenders will consider expansion of their community partnerships by participating in the SBA's Microloan Guaranty Pilot Program, thus further increasing the pool of capital available in LMI and minority areas. In addition, Community Express lenders will consider funding the Loan Loss Reserves and local TA match required by the SBA's Microloan program, thus further increasing the supply of capital in LMI/minority areas.

In initial target markets in which no SBA Microloan intermediary currently exists, Community Express lenders will work the NCRC and the SBA to: (1) Identify and develop appropriately qualified SBA Microloan intermediaries; (2) Assist potential intermediaries in applying to the SBA's Microloan program; (3) Assist potential intermediaries to develop the necessary financial resources to participate in the Microloan Program; and, (4) Develop the experience and expertise of the community partners. NCRC will facilitate the training and capacity building of the community partners, drawing on its training capacity and the expertise of its more experienced member TA providers.

## 3. PROGRAM OBJECTIVES

Community Express program objectives include:

- Increasing and broadening the delivery of loan products to pre-designated geographic areas serving primarily New Markets.
- Combining technical and financial assistance to maximize the development and success potential of New Markets small businesses.
- Increasing the collaboration among community-based organizations, the SBA, local governments, and lenders.
- Encouraging private sector lenders to take a more aggressive and more effective role in developing underserved markets and communities.
- Complementing the SBA's Microloan program and enhancing the development of Microlenders.
- Streamlining and expediting the SBA loan approval process for New Markets small businesses.
- Continuing program monitoring and oversight to ensure portfolio quality and subsidy risks are appropriately controlled.

The Community Express program will continue as a pilot program through September 30, 2005.

#### 4. HOW DOES A LENDER BECOME A COMMUNITY EXPRESS LENDER?

The Community Express pilot is initially limited to lenders currently participating on the NCRC Bankers Council. (See Appendix I for specific participants.) However, on October 1, 1999, the SBA and NCRC will consider adding other interested and qualified PLP lenders to the Community Express program under the same terms and conditions as participating NCRC lenders.

#### 5. WHERE MAY THE LENDER MAKE COMMUNITY EXPRESS LOANS?

The Community Express pilot will focus primarily on pre-designated geographic areas. Each Community Express lender will identify their respective Community Express market(s) prior to submitting loan applications. Identified areas will be Low or Moderate Income urban and rural areas (LMI) or, if not an LMI, they must be specific areas identified by zip code, census tract, or other geographic identifier and be accompanied by a justification as to why the area should be served by Community Express.

Community Express lenders may also serve borrowers outside pre-designated areas if the applicants fit the SBA's identified New Markets small businesses. (New Markets are current and prospective small businesses owned by minorities, women, and veterans who are underrepresented in the population of business owners compared to their representation in the overall population, and businesses located or locating in Low and Moderate Income urban and rural areas.)

6. WHAT ARE THE REQUIREMENTS OF COMMUNITY EXPRESS LOAN PROCESSING?

SBA business loan eligibility, policy, and procedures generally apply to Community Express loans. The Community Express lender must remain cognizant of and apply all SBA business loan requirements, including those in the Small Business Act, 13 CFR Parts 120 and 121, and SBA Standard Operating Procedures (SOPs 50 10, 50 50, and 50 51) unless specifically waived by this document. In addition, certain types of loans, loan programs, and businesses are not eligible for Community Express

A. What Are the Eligibility Requirements?

An SBA loan must be eligible for the SBA guaranty to be valid. To summarize, eligible Community Express applications must meet the following criteria:

- The total amount of a Community Express loan must not exceed \$250,000;
- The applicant business and its owners, partners, and/or principals must have a good credit history, or provide reasonable evidence of a repaired credit history consistent with the lender's practices for similar size and type loans;
- The owners, partners, and/or principals must be of good character, (i.e. must not have provided an affirmative response to any part of the first paragraph of SBA Form 1919); and
- Loan proceeds must be used exclusively for business related purposes.

The following restrictions also apply:

**(1) Loan Programs and Pilots Not Allowable for Community Express**

Lenders may use Community Express only for 7(a) loans and not for the microloan program, the development company program (504) or for LowDoc loans or any other pilot program loans, unless specifically allowed by that pilot.

**(2) Types of Loans Not Allowable for Community Express**

- (a) Disabled Assistance Loan Program (DAL)
- (b) Energy Conservation
- (c) International Trade

- (d) Qualified Employee Trusts (ESOP)
- (e) Pollution Control Program
- (f) Defense Loan and Technical Assistance (DELTA)
- (g) Export Working Capital Program (EWCP); and
- (h) CapLines Program (including Builders Loan Program)

### **(3) Types of Businesses Not Allowable for Community Express**

Community Express loans are not eligible for:

- (a) Agricultural and farm businesses
- (b) Fishing and shore operations (including commercial fishing activities and the construction of new fishing vessels)
- (c) Medical facilities (including residential care facilities)
- (d) Mines (including sand and gravel pits)
- (e) Applicants doing business in foreign countries
- (f) Business engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting; and,
- (g) A business with any products or services of a sexual nature.

### **(4) Refinancing Under Community Express**

Under Community Express, a lender may refinance an existing non-SBA guaranteed borrower debt if: (1) The existing loan no longer meets the needs of the applicant; (2) The new loan meets the SBA's 20 percent increase in cashflow requirement, if applicable (see SOP 50 10); and, (3) The existing debt has been current (no payment beyond 29 days past due) for at least the last two years. This policy applies to refinancing a debt between the applicant and the requesting lender or between the applicant and another lender. Lenders must take care, however, to avoid any circumstances that could create a possible conflict of interest.

Existing SBA guaranteed loans may not be refinanced under Community Express.



**(5) Community Express Funds Must Be Used for Business Related Purposes:**

Due to the special nature of the Community Express program, and the level of delegated authority, lenders must take reasonable steps to ensure that loan proceeds are used for business related purposes.

**(6) Additional Restrictions Specific to Community Express**

The following restrictions also apply to Community Express loans:

- (a) Existing SBA loan. If an applicant already has an SBA loan for the applicant business, the lender may make the Community Express loan only if the existing SBA loan is current.
- (b) Piggy-back loan. A loan is not eligible for Community Express if the lender has a piggy-back loan with the borrower. A piggy-back is a loan made by the lender at or about the same time for the same or similar purpose as the Community Express loan, with a lien position senior to the Community Express loan.
- (c) 100% Financing. A Community Express loan may not be used to finance more than 90 percent of the actual cost of any real estate being acquired or of the capital needs for a new business.
- (d) SBA Form 1919CX. A Community Express loan may be made only if questions 1, 2, and 3 on any required SBA Form 1919CX, Community Express Borrower Information Form, for the Community Express loan are all answered “No.”
- (e) Previous submission. A loan is not eligible for Community Express if the Community Express lender is aware that the application was previously submitted to SBA under any other program, including *SBAExpress*, PLP, CLP, LowDoc or regular 7(a).
- (f) Ethical requirements. A loan is not eligible for Community Express if there is any question of possible violation of any of SBA’s ethical requirements.
- (g) Contaminated collateral. A loan is not eligible for Community Express if it will have primary collateral that will not meet SBA’s environmental requirements or that will require use of a non-standard indemnification agreement, as described in SOP 50-10(4).
- (h) Previous loss to government. A loan is not eligible for Community Express if:

(i) The applicant business previously defaulted on a Federal loan or Federally assisted financing that resulted in the Federal government or any of its departments or agencies sustaining a loss in any of its programs; or

(ii) Any of the owners, or those that control the applicant business, or any of its associates, previously owned, operated or controlled a business that defaulted on a Federal loan (or guaranteed a loan that defaulted) and caused the Federal government or any of its agencies or departments to sustain any loss in any of its programs.

This restriction applies whether or not SBA was involved in the previous loss.

In addition, a loan is not eligible if a principal of the applicant was the recipient of a student loan that is in a delinquent status.

(i) Conflict of interest. A loan is not eligible for Community Express if there are any real or apparent conflicts of interest involved.

(j) Line of Credit A loan is not eligible for Community Express if it guarantees a letter of credit, funds a line of credit to secure a letter of credit, or otherwise funds or secures a letter of credit.

Some loans that are not eligible for Community Express may be eligible under other SBA loan programs, including *SBAExpress*, PLP, LowDoc, or regular 7(a) .

## B. What Are the Terms and Conditions of Community Express Loans?

### **(1) Maximum Loan Amount and SBA Guarantee Percentage**

The total amount of any Community Express loan may not exceed \$250,000. The SBA guarantee on a Community Express loan may not exceed 80 percent on loans of \$100,000 or less, and 75 percent on loans of more than \$100,000. The aggregate balance of all Community Express loans to a single borrower, including the borrower's affiliates, may not exceed a total amount of \$250,000. The aggregate balance of the SBA guaranteed portions of Community Express and all other outstanding SBA loans to a borrower and its affiliates may not exceed \$750,000.

EXAMPLE 1: A borrower has one Community Express loan of \$50,000, and another Community Express loan of \$100,000. The borrower may obtain another Community Express loan for \$100,000.

EXAMPLE 2: A borrower has a 7(a) loan with a balance of \$750,000 and an 80% SBA guarantee (for an SBA portion of \$600,000). The borrower may obtain a Community Express loan for \$200,000.

## **(2) Multiple Community Express Loans**

A lender may not approve more than one Community Express loan to the same borrower for the same project, unless there is a legitimate need to do so. A loan for a project may not be split into multiple smaller loans, in order to avoid SBA fees or requirements.

EXAMPLE 1: A borrower needs \$75,000 for working capital. A lender proposes to make three Community Express loans of \$25,000 each, so that none of the loans require collateral. (See Paragraph 4.B.(6) of this Guide regarding collateral requirements.) The loans are not eligible for Community Express, because the reason for splitting the loans is to avoid an SBA requirement.

EXAMPLE 2: A borrower needs \$150,000 to start its business--\$100,000 to purchase equipment and a \$50,000 line of credit. The lender applies for two separate Community Express loans, because the maturity and repayment terms will be different for the equipment purchase and the line of credit. The loans are eligible for Community Express.

## **(3) Revolving Line of Credit Loans**

Revolving line of credit loans are eligible for Community Express, but they must have a stated term that cannot exceed five years. We strongly believe that the availability of revolving lines of credit is important to small business. We are concerned, however, that revolving line of credit loans, particularly those disbursed through credit cards, may not meet the requirement that SBA loans be used only for business purposes. To ensure that this condition is met, SBA expects lenders to take reasonable and prudent steps to ensure loan proceeds are consistently and exclusively used for business related purposes, and the loan is repaid through the cashflow of the business. In the case of credit card disbursements, this may require the lender to monitor monthly credit card charges to ensure there are no recurring inappropriate (non-business) expenditures.

### **Loan Term Extensions:**

**Renewals:** The term of a Community Express revolving loan may be extended up to a maximum of five years from the original date of the note. The extension is done by providing notice to the SBA servicing office. (No new loan number will be generated.) However, if the initial loan was originally 12 months or less with a

.25 percent guaranty fee, and the loan is being extended past 12 months, the lender must pay to SBA in Denver the remainder of the SBA guaranty fee that would have been due if the loan had originally been for a term of more than 12 months.

EXAMPLE: A lender makes an \$80,000 revolving loan with a 12 month maturity and pays an SBA guarantee fee of 0.25 percent. At maturity, the lender extends the loan for another 12 months. At that time the lender must pay SBA an additional guaranty fee of 1.75 percent (2 percent minus 0.25 percent).

Workouts/Termouts: Community Express loans may be termed out only as a result of a workout situation. The maximum term for any workout is the minimum period that would normally be required to pay back the loan from the cash flow of the business, not to exceed three years. Loans with initial terms of 12 months or less that are termed out beyond 12 months as part of a workout arrangement do not require an additional guaranty fee above the original .25 percent.

Increases: A Community Express revolving line of credit loan may be increased based on the needs of the small business and its credit situation, but the increase must not make the loan exceed the Community Express limit of \$250,000. While the amount of the increase is left to the discretion of the lender, it is expected that increases above 33 percent of the original loan amount will include an analysis of appropriate credit and risk factors consistent with the procedures the lender uses for loans of similar size and type without a government guaranty. Increases must be processed through SBA's Little Rock or Fresno Service Centers.

#### **(4) Maximum Maturity**

Maturities on Community Express loans are the same as for any other 7(a) loan, except that revolving Community Express loans are limited to a maximum maturity of five years. Also, the term of a Community Express loan may not exceed the period of the SBA guarantee commitment.

#### **(5) Interest Rates**

Community Express loans are subject to the same maximum interest rate as all SBA loans, as published in the Federal Register. For variable rate loans, a Community Express lender is not required to use the base rate identified in the Federal Register. It may use the same base rate of interest it uses on its similar non-SBA loans. However, the interest rate throughout the term of the loan may not exceed the maximum allowable SBA interest rate and the loan may be sold on the secondary market only if the base rate is the low prime rate as published each

business day in a national financial newspaper or is SBA's Optional Peg Rate.

#### **(6) Collateral**

SBA's general policy is that, to the extent that collateral is available, it must be taken to fully secure all loans backed by taxpayer dollars. However, under Community Express, to encourage smaller loans and to facilitate access to smaller lines of credit, lenders are not required to take collateral for loans of \$25,000 or less. For Community Express loans greater than \$25,000, the lender may either comply with SBA's general collateral policy or follow the collateral policies and procedures that the lender has established and implemented for similar size and type loans not guaranteed by the government. (The SBA nevertheless expects the lenders' collateral policies will be reasonable and prudent.) Technical assistance may be considered a collateral enhancement.

#### **(7) Fees**

The SBA guarantee and servicing fees are the same for Community Express as for regular SBA loans. The lender may charge the same other fees for Community Express loans it charges for its non-SBA loans of similar size and type, but SBA will not purchase any portion of the loan balance that consists of fees charged to the borrower.

#### **(8) Access to Community Express Funds**

Community Express loan funds may be accessed through a variety of methods consistent with the way the lender normally conducts business for similar size and type loans. Access through a credit card issued by the lender, including for revolving lines of credit, is acceptable under the Community Express program. However, lenders are expected to take reasonable and prudent steps to ensure loan proceeds are consistently and exclusively used for business related purposes. In some instances this may require the lender to monitor expenditures on a periodic basis to ensure there are no inappropriate expenditures. Also, in providing credit card access, lenders must ensure that these loans are supported by legally enforceable and assignable debt instruments.

#### **(9) Secondary Market Sales**

Community Express loans may be sold on the secondary market, as long as for variable rate loans, the base rate is the low prime rate as published each business day in a national financial newspaper or is SBA's Optional Peg Rate.

### C. What is the Technical Assistance Component of Community Express?

The SBA and the NCRC recognize that management and technical assistance are critical factors in the development, growth, and success of a small business concern. The Community Express program therefore requires that each loan recipient must receive appropriate pre- and post-loan closing management and technical assistance with an emphasis on post-loan closing assistance, particularly in instances where payments have been missed.

Community Express lenders must establish (and document) an internal procedure to ensure the consistent delivery of appropriate and effective technical and management assistance. The assistance is to be arranged and coordinated jointly by the lender and the technical assistance provider, and, when necessary, paid for by the lender; there is to be no charge to the loan applicant. The NCRC will coordinate with participating lenders to identify and select qualified community based technical assistance providers. (The lender's Community Express file must include a copy of the lender/TA provider agreement, and this documentation is to be available for review by SBA's lender review teams.)

The management and technical assistance should begin with an assessment of the strengths and weaknesses of the applicant and should result in an appropriate action plan. This plan will include appropriate management counseling and training assistance to help overcome any identified weaknesses.

Each lender's loan file must include documentation of the management assessment, the action plan, and the counseling and training assistance provided. (SBA Form 1062 and Form 888, completed by SBA resources including SBDCs, may be useful.) This documentation must also be must be available for SBA review teams. Loan applicants are also to sign (at loan closing if not sooner) an authorization permitting the lender to furnish relevant information concerning the loan applicant's operation, loan performance, etc. to the TA provider.

### D. What is the Lender's Eligibility Review?

Although we don't delegate the SBA eligibility determination to the Community Express lender, the Community Express lender must determine that a Community Express loan is eligible for an SBA guaranty under Community Express before it submits a request for loan number. The lender must do for Community Express loans the things that SBA does for 7(a) loans to determine a loan is eligible. For example, franchise documents must be reviewed to determine that the franchisee has the opportunity for profit and the risk of loss commensurate with ownership. The Community Express lender must keep in its loan file documentation supporting its eligibility determination.

For a Community Express loan, size of the applicant is determined as of the date of the

lender's approval of the loan. A Community Express lender may accept as true the size information provided by the applicant, unless credible evidence to the contrary is apparent.

#### E. What Credit Analysis Must the Lender Do?

The Community Express credit decision is delegated to the lender. However, the lender is required to use appropriate and generally accepted credit analysis processes and procedures, and these procedures must be consistent with those used for similar size and type loans the lender makes without an SBA guarantee. Acceptable analytical processes include “credit scoring” if the lender uses credit scoring for similar size and type non-SBA loans. The credit analysis technique must be documented, must be kept in the loan file, and is subject to SBA review.

### 7. WHAT IS THE COMMUNITY EXPRESS APPLICATION PROCEDURE?

#### A. What Forms Are Required?

Community Express loan packages must include the forms and information the lender requires to make an informed eligibility and credit decision as well as documentation of the management assessment and the management assistance provided. The lender's application must be certified by the applicant as true and complete, and it must reflect that the loan proceeds are to be used exclusively for business related purposes. This language must appear on the application form or on the financial statement from the applicant if a specific application form is not used. The form including this certification must be signed by the borrower.

The only SBA application form required is the SBA Form 1919CX, “Community Express Borrower Information Form.” For a Community Express loan, one of these forms must be signed by each of the following:

- (a) for a sole proprietorship, the sole proprietor.
- (b) for a partnership, all partners.
- (c) for a corporation, each officer, director, and 20% or more owner.
- (d) any other person, including a hired manager, who has authority to speak for and commit the borrower in the management of the business.
- (e) any person guaranteeing the loan, if that guaranty normally would have been required by SBA.

The lender must keep the form as part of the loan file, but does not have to send it to SBA.

The Community Express lender is responsible for the completeness of all of the required forms and information.

## B. How Does the Community Express Lender Request an SBA Loan Number?

When the Community Express lender determines that a loan is eligible, approves the credit, and completes the loan package, the lender sends to the Sacramento Loan Processing Center ("the Center") the "Request for Loan Number" and any forms or checklists required by the Center (to provide evidence of eligibility and required data inputs to generate the loan number).

Lenders may send requests for loan numbers by mail, facsimile transmission or electronic transmission with the specific option worked out with the Center. However, the SBA is moving towards electronic transmission of loan applications via the Internet, and at some future point, Community Express participants must comply with this requirement.

For loans with a maturity of twelve months or less, the lender does not send the check for the guaranty fee to the Center with the request for a loan number. When a loan number is assigned for a short-term loan, the Center tells the lender that the guaranty fee check must be sent directly to OFO at U.S. Small Business Administration, P.O. Box 748, Denver, Colorado 80259. The lender must do this before it signs the SBA Authorization for SBA. If OFO does not get the check within 10 business days after we issue the loan number, SBA cancels the guaranty.

## C. What Does the Center Review?

The Center reviews the request for loan number to check that the lender provided the required information and see if there are any eligibility problems.

This eligibility review is a quick look to protect SBA and the lender from ineligible loans on which SBA could not honor its guaranty. If we assign an SBA loan number and later learn that the loan is not eligible, we still may deny liability on our guaranty.

Note: Congress determines SBA's budget on an annual basis. SBA does not have the ability to guaranty loans if it has run out of authority. While we delegate loan approval authority to the Community Express lender, the loan does not have an SBA guaranty until the Center issues a loan number. The Center does not issue a loan number if funds are not available.



D. How Do We Notify the Lender After We Review a Request?

If a loan is eligible and funds are available, the Center will try to give the lender a loan number by fax or by electronic transmission within one day after the request for loan number is received. If the Center identifies an eligibility problem, the Center reviewer advises the lender of the problem. If the lender wants, the Center will deny the loan number within the one-day turnaround period and explain the eligibility problem in writing to the lender and the SBA field office. Or if the lender prefers, the Center will keep the application until the problem is researched and resolved.

E. How Does a Lender Request Reconsideration of a Denial?

If the Center finds a proposed loan ineligible and the lender disagrees, the lender may request a reconsideration, which must be in writing. An oral discussion can occur as to the facts but it must be followed up in writing and contain the information needed to make an eligibility decision. The lender must send the reconsideration request to the Center within 30 days after receiving the Center's initial decision. The Center will notify the lender of the reconsideration decision.

If the reconsideration is denied, the lender may ask for further reconsideration. The request for further reconsideration must be sent to the Center within 30 days after the last eligibility decision. It must specifically request a reconsideration at the next higher level and say why we should reverse the eligibility decision. The Center sends the request to the Associate Administrator for Financial Assistance for review and a final eligibility decision. The Center tells the lender the final decision.

Loans ineligible for Community Express may under some circumstances be eligible for submission under some other SBA loan program [such as PLP, CLP or regular 7(a)]. If the Center denies a Community Express loan number and the lender resubmits the loan to SBA under another loan program, the lender must notify the office to which it submits the loan that the loan was denied a Community Express number. The lender must provide that office a copy of the Center's denial letter.

8. WHAT MUST A LENDER DO FOR CLOSING, SERVICING AND LIQUIDATION OF COMMUNITY EXPRESS LOANS?

A. Who Drafts and Signs the SBA Authorization?

The lender drafts the Authorization without SBA review and signs it on behalf of

SBA. The Authorization is drafted from the form “Authorization (Community Express Loan)”.

B. What are the Closing Requirements?

A Community Express lender may use the same closing and disbursement procedures and documentation for its Community Express loans as for its conventional loans. However, the note or debt instrument must be in a form that is legally enforceable and assignable, in the event that it would ever have to be assigned to SBA to take over servicing of a Community Express loan.

The lender must make sure to get all required collateral positions and to meet all other required conditions before loan disbursement. These conditions include requirements identified in the loan write-up, like standby agreement, appraisal, business license, or cash/equity injection.

The lender must do the following before disbursing a loan for which it issues an SBA guarantee:

(1) The lender must use IRS tax transcripts to verify financial information used to support the loan credit analysis for all existing small businesses and for any small business being acquired with loan proceeds. The lender has the applicant sign “Request for Copy or Transcript of Tax Form,” IRS Form 4506 (or another form as IRS may designate) and requests a transcript from IRS. An explanation of the tax verification procedure and requirements is in SOP 50-10(4), pages 153-156. If the lender discovers any discrepancy that is significant enough to indicate possible fraud on the part of the small business, the lender must:

-- Instruct the Center in writing to cancel the loan; and

-- Call the OIG FRAUD LINE at 1(800)767-0385 (Toll Free) or mail complaints or fraud cases to:

Small Business Administration  
Office of Inspector General  
Investigations Division  
Mail Code: 4113  
409 3<sup>rd</sup> Street, SW  
Washington, DC 20416

Include a cover letter explaining the discrepancy. Include the names, addresses and telephone numbers of the applicant, business, lender, packager and tax return preparer.

(2) Get satisfactory evidence that there has been no unremedied adverse change

since the date of the application, or since any of the preceding disbursements, in the financial or any other condition of Borrower that would warrant withholding or not making any disbursement.

(3) Get required hazard insurance. Hazard insurance is generally required on all collateral. If the lender does not require hazard insurance (for example, if it would impose an undue burden on a borrower given the small size of a loan), the lender must document the reason in its loan file.

(4) Make the required flood hazard determination and require flood insurance when necessary, pursuant to the flood insurance requirements in SOP 50-10-(4). (Generally, those requirements state that flood insurance is required on real estate collateral in a flood zone, but it is within the lender's discretion to determine whether flood insurance is necessary on contents when the building is not taken as collateral.)

(5) In the construction of a new building or an addition to a building, get borrower's agreement that the construction will conform with the "National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings." Compliance with these requirements must be evidenced by a certificate issued by a licensed building architect, construction engineer or similar professional, or a letter from a state or local government agency stating that the issuance of an occupancy permit is required and is subject to conformance with building codes and that the local building codes include the Seismic standards.

The following codes have been identified as being substantially equivalent to the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions: 1991 Uniform Building Code of the International Congress of Building Officials (ICBO); 1992 Supplement to the Building Officials and Code Administrators (BOCA) National Building Code; 1992 Amendments to the Southern Building Code Congress (SBCC) Standard Building Code.

(6) Get borrower's agreement that it will, to the extent feasible, purchase only American-made equipment and products with the proceeds of the Community Express loan.

(7) For any loan involving construction of more than \$10,000, require borrower and contractor to execute SBA Form 601, Applicant's Agreement of Compliance. Lender must keep this form in the loan file, but does not have to send it to SBA.

For any loan with construction proceeds exceeding \$150,000, require the following or retain documentation in the loan file documenting why it was waived:

- (a) A requirement for a 100 percent payment and performance bond naming borrower as obligee;
- (b) A requirement for borrower-furnished builders risks and worker's compensation insurance;
- (c) If applicant is injecting funds into the construction project, a requirement that these funds will be used prior to first disbursement of the loan;
- (d) A requirement that one complete set of plans and specifications of the proposed construction be submitted to the participant;
- (e) A requirement that the borrower furnish a firm construction contract from an acceptable contractor at a specified price, including a provision that no material changes are to be made without lender's prior written consent; and
- (f) A requirement that, prior to any disbursement, lien waivers be obtained from all contractors, subcontractors, independent workers, and suppliers of material connected with the project.

(8) The Small Business Act requires that all borrowers supply information about payments to loan packagers, accountants, appraisers, lawyers, or any other individual or entity that assisted the borrower in getting the loan. The borrower may use either SBA Form 159 or the lender's form, as long as it provides the information required by SBA Form 159. Lender must keep this form in the loan file, but does not have to send it to SBA. If the applicant did not pay anyone to assist in the preparation of the loan, the applicant must certify to this in writing or fill out the form showing no payment.

(9) Get certification from any 50% or more owner or applicant that he or she is not more than 60 days delinquent on any obligation to pay child support arising under:

- a) an administrative order;
- b) a court order;
- c) a repayment agreement between the holder and a custodial parent; or
- (d) a repayment agreement between the holder and a state agency providing child support enforcement services.

(10) Require appropriate environmental reviews and compliance. An Community Express lender must follow the environmental requirements of SOP 50-10(4) and is delegated the authority to internally make the decisions regarding environmental risk that are stated there as reserved for the processing SBA office. A Community

Express lender may not:

- (a) Request a Community Express loan number for a loan that the lender knows will have primary collateral that will not meet SBA's environmental requirements or that will require use of a non-standard indemnification agreement; or
- (b) Disburse a loan requiring use of a non-standard indemnification agreement, without SBA approval.

(11) Retain evidence of the amount of any cash or equity injection.

(12) Get an appraisal for any real estate collateral appraised at more than \$100,000.

At or after closing, the lender must verify that the loan proceeds were used for eligible business related purposes consistent with "use of proceeds" requirements. The lender does not have to use SBA Form 1050, Settlement Sheet, to document disbursements. However, the lender must follow verification procedures at least as thorough as it does for its conventional loans and must retain in its files documentation proving that the loan was used for designated purposes. For revolving lines of credit, the documentation must at least consist of a certification by each borrower and a system to check borrower draws (whether by sampling or otherwise).

The lender must send only a copy of the executed Authorization to the Center. The lender should not send any other closing documentation to the Center after closing a Community Express loan.

#### C. What Are the Servicing and Liquidation Requirements?

Routine Community Express loan servicing and liquidation issues will be handled by SBA's Loan Servicing Centers in Little Rock ( 2120 Riverfront Drive; Little Rock, AR 72202 (501-324-5871)) and Fresno (2719 North Air Fresno Drive; Fresno, CA 93727-1547 (209-487-5650)), but all purchases will be handled by Fresno.

The Community Express lender must service and liquidate its SBA guaranteed loan portfolio using generally accepted commercial banking standards employed by prudent lenders. In the case of revolving loans and loan funds accessed by credit card or some sort of cash advance system, the lender must use appropriate diligence to ensure ongoing disbursements are used exclusively for business related purposes. In some instances this may require the lender to monitor expenditures on a periodic basis to ensure there are no inappropriate expenditures.

The Community Express lender must liquidate any defaulted SBA guaranteed loan in its portfolio unless SBA advises in writing that SBA will liquidate the loan. The lender must take ordinary protective measures when merited. It may recover expenses of protection of collateral from the proceeds of the sale of collateral.

Lenders must accurately report the status and outstanding balance of all of their SBA loans, including Community Express loans, to Colson Services Corp., using the 1502 format, by the third day of each month, or the next business day after the third if the third of the month is not a business day.

All Community Express lenders must remain current in filing the required monthly reports in the form required by SBA and in remitting required SBA servicing fees.

**(1) When is SBA Consent For an Action Required?**

The Community Express lender may take any necessary servicing or liquidation action for any Community Express loan in its portfolio, with the following exceptions:

The lender must get prior written consent of SBA before taking an action to:

- (a) Increase the principal amount of the loan
- (b) Change the SBA guaranteed percentage of the loan
- (c) Transfer the loan to another lender
- (d) Compromise the principal balance of the debt with a primary obligor
- (e) Sell or pledge more than 90 percent of the loan
- (f) Disburse a loan with primary collateral having significant potential environmental risks that are proposed to be minimized by a non-standard indemnification agreement
- (g) Acquire or purchase environmentally impaired property
- (h) Convey a preference on the lender (including an increase in a prior lien the lender holds on loan collateral) or create a conflict of interest
- (i) Litigate any contested loan

The lender must notify SBA when it takes an action to:

- (j) Decrease the principal amount of the loan
- (k) Cancel the loan
- (l) Change the trade name of the business (or, if it has no trade name, the name of the business entity)
- (m) Change the borrower's address
- (n) Change the interest rate on a fixed rate loan or the interest rate spread on a variable rate loan
- (o) Change a loan's maturity
- (p) Handle a situation that requires SBA to re-classify the loan into "liquidation status."

SBA will send the lender a written concurrence or nonconcurrence for any action requiring SBA consent, and will acknowledge in writing the receipt of any notification required above. For all actions for which the lender has unilateral authority, it must keep documentation of the actions in its files.

## **(2) How Does the Lender Document Liquidation of a Community Express Loan?**

The lender does not have to provide a liquidation plan to SBA. However, it must document any action taken during the liquidation of a loan. SBA will review liquidation actions as part of the general review of a lender's use of the Community Express program.

## **(3) How Does the Lender Apply Proceeds of Collateral?**

Apply proceeds from the sale of collateral in the following order:

- (a) liquidation expenses
- (b) the 120 days of interest permitted on the balance as of the earliest uncured default
- (c) principal balance of the loan.

#### **(4) May the Lender Take Back a Note Receivable?**

A lender may take back a Note Receivable on the sale of collateral on any reasonable terms negotiated between the lender and the buyer. The Note Receivable will not have an SBA guarantee.

#### **(5) What Situations Require Particular Justification?**

Avoid selecting firms owned by officers, directors, employees or stockholders (10% or greater) of the lender to provide care and preservation services, legal assistance, or other liquidation services. If it cannot be avoided, be prepared to justify the benefit to SBA of using the particular firm.

The lender must document and justify any release of collateral for an SBA guaranteed loan that will subsequently be pledged for a conventional loan from the lender. This situation may be considered to be a Preference.

### **9. HOW DOES SBA PURCHASE ITS GUARANTEE?**

SBA purchases its guarantee after:

- (a) the lender has fully liquidated all collateral;
- (b) the lender has pursued all collectible obligors; and
- (c) SBA has reviewed the loan documentation.

If the loan documentation shows that the lender has complied with the Supplemental Guarantee Agreement, this Program Guide, SBA's rules and regulations and is not guilty of fraud, negligence, misrepresentation or other misconduct, SBA will pay the guaranteed percentage of the balance remaining after liquidation plus up to 120 days of interest based on the balance outstanding at the time of the earliest uncured default if liquidation proceeds were insufficient to cover a full 120 days of interest. The SBA will not pay the lender more than the guaranteed percentage of the loan balance at the time of default plus 120 days of interest at the rate in effect on the date of default. The lender must absorb any expenses that exceed this amount.

SBA will not purchase any portion of the loan balance that consists of fees or amounts charged to the borrower. If fees charged by the lender are not paid prior to the purchase request, the lender must deduct the outstanding fees, and interest charged on such fees, from the balance shown on the transcript of account submitted to SBA.



To receive payment, the lender must submit to SBA a liquidation wrap-up report with all the information required by SOP 50 51 (2) and copies of the collateral documents to the appropriate SBA Loan Servicing Center in Little Rock at 2120 Riverfront Drive, Little Rock, AR 72202 or Fresno at 2719 North Air Fresno Drive, Fresno, CA 93727-1547.

The SBA servicing office reviews the account and prepares the paperwork required to process the guaranty purchase.

SBA reserves the right to purchase its guarantee prior to liquidation and to liquidate the loan using SBA personnel. SBA expects this to be a rare occurrence.

10. HOW DOES SBA REVIEW THE COMMUNITY EXPRESS LENDER'S PERFORMANCE?

SBA will assess a Community Express lender's performance through a combination of onsite lender reviews and analyses of available management information system data.

A. Onsite Lender Reviews

Onsite lender reviews may be performed by SBA field offices and/or SBA's centralized review teams. These reviews will focus on how well Community Express Lenders:

- (1) Follow prescribed SBA and Community Express policy and procedures;
- (2) Apply appropriate internal control safeguards;
- (3) Apply reasonable and prudent practices to process, close, service, and liquidate Community Express loans;
- (4) Duplicate, for Community Express loans, those established practices, procedures, and analyses that the lender uses for other non-SBA loans of similar size and type; and,
- (5) Have responded to previous review findings and recommendations.

SBA's intent is to include Community Express loans in its PLP review.

After the Report of Review is finalized, it will be used by SBA as one of the factors in determining whether the lender should continue as a Community Express lender. An Community Express review will not be used to determine the extent to which the SBA guarantee is in effect on any particular loan. That determination is made at the time of purchase of SBA's guarantee. Review of a file during an Community Express review does not give the lender any estoppel claim, right or defense.

11. WHAT IS THE PROCEDURE FOR SUSPENSION OR REVOCATION OF COMMUNITY EXPRESS STATUS?

A lender loses its Community Express status if it loses its PLP status. In addition, SBA may determine at any time, at its discretion, whether to suspend or revoke a lender's authority to make Community Express loans under this pilot. Reasons for suspension or revocation may include, but are not limited to, failure to follow prescribed SBA and Community Express policies and procedures, loan performance unacceptable to SBA; failure to be an active participant of the Community Express program; an inability to acceptably process, close, service and liquidate SBA loans; violations of applicable statutes, regulations; or, the terms of the Community Express Agreement.

**Appendix I: Lenders and Territories**

<b>Lender</b>	<b>Low/Mod Income Territory*</b>
Bank of America	Dallas (May'99), Los Angeles (May'99), Miami (May '99), Pensacola-Tallahassee corridor (May '99), San Francisco / Oakland (May '99)
BankBoston	Boston, Hartford-Springfield
Bank One	Chicago (May'99), Milwaukee (May '99), Cleveland (TBA), Detroit (TBA)
Chase Manhattan / Chase Texas	New York City, Long Island, Houston, Rochester/Western N.Y including Buffalo
European American Bank	New York City, Long Island
Mellon	Pittsburgh (Allegheny County), Philadelphia (Philadelphia County)
Wachovia	Durham, Greensboro, Columbia, S.C. (June)
Wells Fargo	Phoenix (June), Seattle (June)

\*These target markets will be subject to change based on merger activity and bank management.